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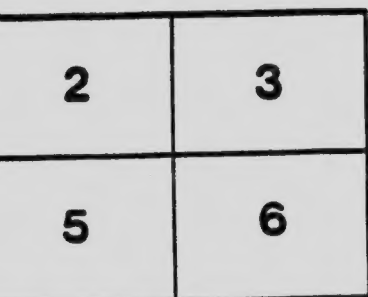
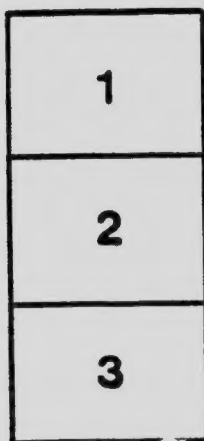
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DEMOCRACY IN CANADA

HUNT

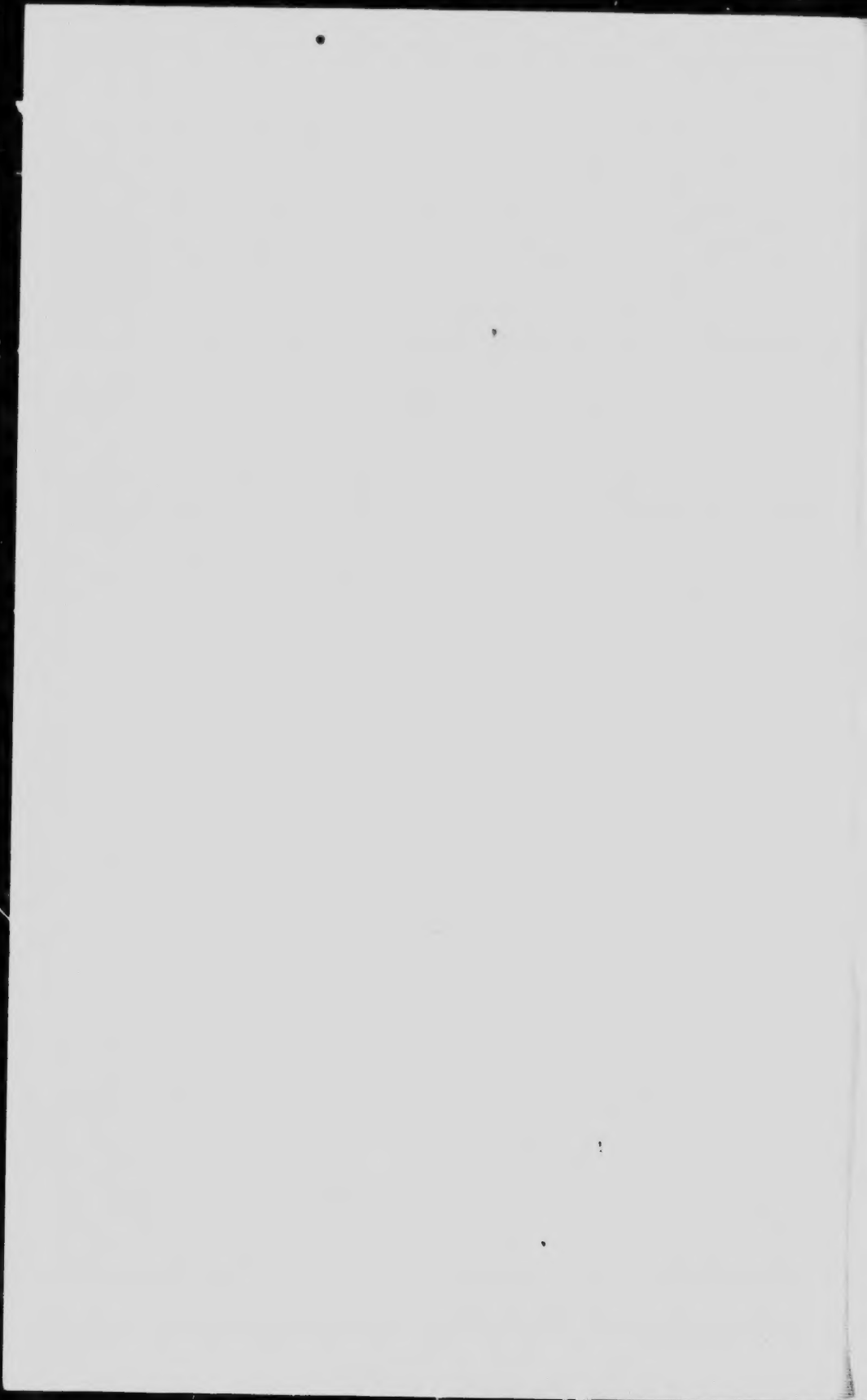
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DEMOCRACY IN CANADA

BY

JOHN D. HUNT

CLERK OF THE EXECUTIVE COUNCIL, ALBERTA



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PREFACE

It was deemed advisable, in issuing a second edition of *The Dawn of a New Patriotism*, to add a new chapter dealing with the development of self-government in our own country, under the title of "Democracy in Canada". This chapter is published in separate pamphlet form in the hope that it may be read by many to whom the larger work, for various reasons, may not be accessible.

A large number of naturalized Canadian settlers, who have never had the advantage of our public school course, are lamentably ignorant of even the rudiments of the history of their adopted country. To such, a concise, connected general summary of important events, political issues, and constitutional changes affecting Canada since 1763 should be of great assistance in determining their rights and obligations as members of a democracy, in which the kind as well as the form of government depends upon the intelligent use of the ballot.

To the person who does not read widely, the sketch, short as it is, will give a general idea of the essentials of our history, and if an interest is aroused that will lead to further study and discussion, so much the better.

For those who have read extensively, the pamphlet will supply a valuable outline within which

to gather and store in consecutive order the results of promiscuous historical research.

Even the master of Canadian history will find a synopsis that can be read at a sitting very convenient for refreshing the memory from time to time.

The pamphlet has not been censored by any committee, class, or interest, is non-partisan in its views, patriotic in spirit, and is an honest attempt to give the average citizen a short and interesting story of the steps by which we have reached the threshold of Canadian nationhood.

J. D. H.

Edmonton, September 27th, 1918.

DEMOCRACY IN CANADA

When Quebec fell and the Treaty of Paris closed the mighty struggle between Great Britain and France for supremacy in America, the French inhabitants of the official and military class returned to France. They left in the conquered territory a population of from sixty to seventy thousand, mostly peasants, steeped in the ideas and habits of a feudal monarchy and accustomed to the control of authority hostile to freedom of thought.

A Proclamation issued by George III provided for two Provinces—Nova Scotia and Quebec—leaving the western regions under the control of the British government.

Nova Scotia, including New Brunswick and part of Maine, had been a British colony since 1713 under the military rule of a Governor and Council, whose authority was defined in the Governor's Commission. The Commission of 1749 authorized the calling of a Legislative Assembly, but there was much delay and unwillingness on the part of the Governor and his Council to act upon this direction, so that the first Parliament of Nova Scotia and in Canada was not called until 1758.

By the Proclamation of 1763 Cape Breton and Prince Edward Island were annexed to Nova Scotia. Six years later Prince Edward Island was made a separate province, under a Governor of its own, and with provision for a General Assembly. Lord Durham, speaking of the Island, in his Report in 1838, said: "Nearly the whole island was alienated in one day by the Crown in very large grants, chiefly to absentees, and upon conditions of settlement which have been wholly disregarded". The allotment was made in England by ballot. The grantees were military officers and others who had claims on the government. The island was divided into sixty-seven townships of twenty thousand acres each, with small reservations for military, religious, and educational purposes. There was no co-operation on the part of the proprietors to secure immigration. Each acted on his own responsibility, and while a few showed energy in the work, the great majority did nothing. But they had great influence in England, and for over one hundred years they were able to thwart every effort of the Island Assembly to effect such a change in the land system as would further settlement and improve conditions.

In 1784 New Brunswick was made a separate province, and the Commission of its first Governor authorized the summoning of a General Assembly, which shortly thereafter met. Settlement along the St. John River was retarded by the giving of large grants of land to military officers, who made no effort to bring in settlers, as their patents required. These grants were subsequently forfeited, and the lands

given to the Loyalists, who, after the American Revolution, settled in large numbers along the river.

It will thus be seen that, so far as the Maritime Provinces are concerned, their Legislatures of to-day are the lineal descendants of those early General Assemblies.

In the latter part of the eighteenth and the early part of the nineteenth century the British government was commended because of the complete separation, as was supposed, of the legislative and executive departments. Legislative supremacy resided in the Parliament, executive supremacy in the Crown. A change was gradually brought about in Great Britain until the supremacy of Parliament over the Executive became a clearly established principle of the British Constitution. Briefly stated, it was effected by the judicious use of the Commons' control over the purse-strings to secure the consent of the Crown to the relinquishment to Parliament of the most important of those common law powers of the executive, known as "the prerogatives of the Crown". The financial necessities of the Executive gradually led to the surrender to Parliament, or at least to parliamentary control, of the entire executive government of the nation.

That the early Assemblies of the provinces were intended to be confined to purely legislative work, and that in the doing of it they were not to interfere in the executive government of the colonies, is apparent when one comes to study somewhat more closely the Governors' Commissions, which were the constitutional charters of those provinces.

There is no essential difference in the terms of these Commissions. The first Commission conveying authority to summon an Assembly was that of Governor Cornwallis of Nova Scotia: "For the better administration of justice and the management of the public affairs of our said province" the Governor was authorized to appoint "such fitting and discreet persons as you shall either find there or carry along with you, not exceeding the number of twelve, to be of our Council in our said province; as also to nominate and appoint by warrant under your hand and seal all such other officers and ministers as you shall judge proper and necessary for our service and the good of the people whom we shall settle in said province, until our further will and pleasure shall be known". Subsequent appointments to fill vacancies in the Council were to be made by the authorities in England. With the advice and consent of the Council, the Governor was empowered to establish Courts of Justice and to appoint all necessary ministerial and judicial officers in connection therewith. The public revenue was to be disbursed by the Governor's warrant, by and with the advice of the Council, with this limitation, however, that it was to be disposed of by the Governor for the support of the government, and not otherwise. But in the early colonial days the financial necessities of the executive government were so largely met by the revenues arising from the sale of Crown Lands, from fines, tolls, and other royalties of various sorts, and for the balance by grants from the Imperial Parliament, that the Executive of a colony

was to a large degree independent of the colonial Assembly. It is hardly to be wondered at, having in view the mode of appointment and of filling vacancies in this Council, that the executive government of those days came to be designated by the familiar phrase, "The Family Compact".

Turning now to the part played in government by the Assemblies, the Commission to Governor Cornwallis commanded him to govern the colony according to his Commission, the instructions therewith or to be thereafter given, "and according to such reasonable laws and statutes as hereafter shall be made or agreed upon, with the advice and consent of our Council and the Assembly of our said province". The legislative power was in terms ample—"to make, constitute, and ordain laws for the public peace, welfare, and good government of our said province, and for the benefit of us, our heirs and successors, which said laws are not to be repugnant, but as near as may be agreeable to the laws and statutes of this our Kingdom of Great Britain". All such laws, however, were subject to disallowance by the Imperial authorities, with no limitation as to the time within which disallowance should take place. The position of the Crown as a branch of the Assembly was recognized in a noteworthy clause—"and in order that nothing may be passed or done by our said Council or Assembly to the prejudice of us, our heirs and successors, we will ordain that you, the said Edward Cornwallis, shall have and enjoy a negative voice in the making and passing of all laws, statutes, and ordinances as aforesaid".

Still, the importance of the concession to the early provinces of the right to a local Assembly must not be underrated. If it cannot be considered a concession of the right of self-government, it must be admitted that it fell short only because of the theory which then obtained, that the two departments of government should be kept strictly distinct, and because of the inability of the colonial Legislatures to withhold supplies until grievances in the executive department were remedied.

The form of government introduced into Quebec must now be examined. The new province comprised the present provinces of Quebec and Ontario. Both the Proclamation and the Commission of Governor Murray contemplated the institution of a Legislative Assembly, but none was ever called thereunder. It was not until after the passing of the Constitutional Act of 1791, dividing Quebec into the two provinces of Upper and Lower Canada, and providing for a separate Legislature in each province, that such Assemblies met, that of Upper Canada at Niagara in 1791, and that of Lower Canada at Quebec a few months later. In 1840, after fifty years of struggle between the Assembly and the Executive Council, after the Rebellion, and after Lord Durham's report had been made, the Home government, by what is known as the Union Act, joined the two provinces of Upper and Lower Canada in a legislative union, with equal representation from each of the old provinces. This lasted until the population of what was formerly Upper Canada exceeded that of Lower Canada by 300,000. The

large increase in the English-speaking population led to an agitation for the introduction of the English civil law and for increased representation in the Assembly, or as it was commonly expressed, "Rep. by Pop". These, along with differences over the division of customs receipts, were among the causes that led to the formation of the provinces of Ontario and Quebec, with local self-government in each, and to a federal union of the provinces of Canada, New Brunswick, and Nova Scotia into the Dominion of Canada.

For eleven years after the Treaty of Paris the Commission to Governor Murray and his successors was the charter of government for Quebec. It provided for the use of English as the official language, for the introduction of the laws of England, including the penal statutes against Roman Catholics, for a Governor and Council, and for an elective Assembly, to be convened as soon as the circumstances of the colony would permit. This sudden overturning of the language, laws, customs, and judicial forms of the colony produced much and just discontent among the French. The Quebec Act of 1774 removed these grievances, but went so far in the other direction that its effects may still be traced in our national politics.

The reader will naturally ask why there was no elective Assembly in Quebec, such as was instituted in Nova Scotia, Prince Edward Island, and New Brunswick. If an Assembly had been called for Quebec, the French would have been excluded from office on account of their religion, the Test Act then

being in force, and the English-speaking people would have been placed in a position to make the laws for the whole of the people. As it was, the Test Act prevented Roman Catholics from being appointed as judges or magistrates, and the fact that these offices were held by the English-speaking inhabitants did much to weaken the confidence of the people of another race, language, and religion.

Moreover, the French laws, especially with regard to property, were very different from those of England, and the methods of trial were unlike, the English favouring trial by jury while the French preferred the direct decision of a judge. Then there were in the country a number of English-speaking people, mostly from the New England colonies, where they had developed ideas of self-government, and who desired an elective Assembly.

A short review of conditions in the American colonies will add clearness to the situation in Canada at this time. For over one hundred years the British monarchs, and especially the Stuarts, had been so glad to be rid of Puritans, Quakers, Baptists, and other independent, rebellious dissenters that they gave them very liberal charters in America, and many colonies, notably Massachusetts, Connecticut, and Rhode Island, had charters that made them almost independent. The colonists elected their own Governors and legislators, and did not even refer their laws to England for approval. In Massachusetts they coined their own money, ceased to issue writs in the king's name, dropped the English oath of allegiance, and concluded that they were

independent, but under an English protectorate. In 1685 the charter of Massachusetts was annulled on account of her disregard of British authority, and the killing, whipping, and imprisoning of Quakers and Baptists, and she became a colony with a Governor appointed by the king. This, after her previous freedom, was very galling, and shows why she was so hot in after years for independence. Virginia, too, had been allowed a very liberal government, and in 1676 rebelled against Britain because she thought her privileges infringed. These outbreaks, and the increasing power of France on the north, compelled England to be liberal, and even lax, in governing her colonies. This was particularly so in regard to her control of the colonial commerce under the Navigation Laws and the laws of trade. Each nation of that time kept, or tried to keep, its colonial trade exclusively for itself. Still another accepted principle was that colonies should confine themselves chiefly to the production of raw materials and buy their manufactured goods from the parent nation. The Navigation Act of 1660, which was passed by Cromwell, who favoured the colonists, provided that:

(1) No goods were to be carried from the colonies except in English or colonially built ships, of which the master and three-fourths of the sailors must be English.

(2) Foreigners could not be merchants or factors in the colonies.

(3) No goods of the growth, product, or manufacture of Africa, Asia, or America could be carried

to England in any but English or colonial ships, and that such goods must be brought direct from the place where they were usually produced.

(4) Oil, whale fins, fish, etc., usually produced or caught by English subjects, must, when brought into England by foreigners, pay double alien customs.

(5) The American coasting trade was to be confined exclusively to English subjects.

The colonies never objected to these provisions, because most of them favoured the colonies as much as they favoured England, but there was a clause which did not please the colonists. It was that:

(6) No sugar, tobacco, cotton, indigo, ginger, fustic, or other dye wood, should be carried from the colonies to any port on the continent of Europe, but must be carried only to England or to English colonies.

The colonists, having ships of their own, wanted to trade directly with the continent of Europe, so as to get all the profit for themselves. Accordingly, the regulation about trading with the continent of Europe was disobeyed, and while France held Canada, England had to submit. Another clause was passed shortly afterwards, as follows:

(7) No commodity of Europe was to be taken to the colonies, except from English ports, and in English-built ships.

This was to compel the colonies to buy their manufactured goods and articles of luxury from England. This regulation displeased the colonists, and they disobeyed it. Many a cargo of manufactured articles from France or Holland, and of wine, oil, and fruit

from Portugal, and many a cargo of the famous cheap Holland tea, snugly packed in molasses hogsheads, did the American vessels "run", as it was called, to their own coast, and smuggling became so universal that commerce was free.

A further Trade Act was passed in 1733, which levied duties on spirits, sugar, and molasses going into the colonies from any of the French or Spanish West Indies. The colonists found this trade very profitable, but they preferred to have it without any tax or duties. The Sugar Act followed in 1764, but the colonies made a dead letter of it, as they did of all the others that interfered with their purposes. Thus the colonies did pretty much as they pleased for over one hundred years.

The other colonies never had so much freedom as Massachusetts, Connecticut, and Rhode Island. They elected the Legislatures, but the Crown appointed the Governors. Each Legislature voted the Governor's salary out of the taxes. The Governor could veto any Act of the Legislature, but the Legislature could withhold the Governor's salary. The result was—the people, through the legislature, bought from the Governor, for cash, such laws as they needed, and the following form of resolution appears frequently in colonial history: "Resolved, that on the passage of such Bills as now lie before the Governor (and such other Bills as may be presented to him during the sitting), there be paid him the sum of five hundred pounds." Around every Governor appointed from England there grew up a little aristocracy of powerful families and in-

dividuals, who afterwards became the Loyalists of the Revolution, while another class, equally wealthy and educated, but democratic, attached themselves to the legislative party, and afterwards became the leaders of the Republican movement.

After the war with France, which closed in 1763, Britain undertook to remodel the colonies:

- (1) By enforcing the navigation and trade laws;
- (2) By levying a new system of taxation.

The colonists had always paid taxes, but it was on the old English voluntary system. This system they were in favour of continuing, but the English considered it uncertain, unequal, and unfair, and besides grants were often held up in order to secure the Governor's consent to legislation. The people would not hear of the change by which the Governor and the judges would have fixed salaries paid by the Home Government out of taxes levied on the colonies for the purpose, nor would they admit that Britain had the right to keep troops and build fortifications in a colony, except by the consent of that colony. They also held firmly that there could be no taxation without representation, and the passage of the Stamp Act led to the final rupture and the independence of the thirteen colonies, after ten years of argument and eight years of war.

Both parties in Canada were dissatisfied with conditions, and both appealed to the Home government for relief. The American colonies were on the brink of the War of Independence, and the British government was disposed to go a long way to satisfy the French, to prevent them from joining with their

neighbours to the south. The result was the passing of the Quebec Act in 1774.

This Act repealed all the provisions of the Proclamation of 1763, including the right to an elective Assembly, annulled all the Acts of the Governor and Council relative to the civil government and administration of justice, and revoked the Commissions of the judges, and other existing officers. It extended the boundaries of the province from Labrador to the Mississippi, and from Ohio to the watershed of Hudson Bay, with the object of preventing the territory from falling into the hands of the rebellious colonies. It established the right of the French to the observance of the Roman Catholic religion without civil disability, gave the clergy the right to collect tithes, that is, one-twenty-sixth of the grain products of the land, Protestants, of course, being exempt. It restored the French civil code, but retained the English administration of law in criminal cases. Both the civil and criminal codes, however, were allowed to be altered or modified by the ordinances of the Governor and the Legislative Council. Authority was vested in the Governor and a Legislative Council of not less than seventeen, nor more than twenty-three members, of whom one-third were to be French, appointed by the Crown for life. This authority was limited to levying local or municipal taxes, and to making arrangements for the administration of the internal affairs of the province, the British Parliament reserving the right to levy duties on articles exported or imported. Every ordinance of the Council had to be submitted to the king for

approval within six months of enactment, and if disallowed became null and void.

Fox, Burke, and Chatham opposed the passing of the Act, the latter saying: "It will involve this country in a thousand difficulties, and is subversive of that liberty which ought to be the groundwork of every constitution."

The English-speaking minority in Canada, and especially those who had been schooled in democracy, felt that their rights had been sacrificed. They were denied the promised elective Assembly and the right of trial by jury in civil cases, and were compelled to hold their property under the ill-understood laws of a foreign country.

Had the principles advocated by Pitt, Burke, and Franklin been carried out by King George, there would have been no Revolutionary War, and had there been no fear of the Canadian colonies seeking union with the United States it is doubtful if Lord North's government would have granted the sweeping concessions contained in the Quebec Act.

After the Revolution a large number of American colonists who had remained faithful to the mother country sought new homes under the old flag. Several thousands of them located near Halifax, others on the Bay of Fundy, on the St. John River, in Prince Edward Island, and in the eastern townships of Quebec, along the northern shores of Lake Ontario, and on the Niagara, Thames, and Detroit Rivers. The Loyalists on the Bay of Fundy soon asked for the privilege of choosing a member to represent them in the Assembly of Nova Scotia,

which had by this time been given an elective Assembly. When the Governor refused their request, they petitioned the British government to combine the northern settlements into a new province. The request was granted, and the Province of New Brunswick created, with an elective Assembly as in Nova Scotia.

The new settlers in the remainder of Canada, which was still known as Quebec, soon began to agitate against the French civil law and for an Assembly elected by popular vote. The French-Canadians were strongly opposed to any change in respect to the administration of the law, but were now eager for an Assembly to which they, (their religious disabilities having been removed by the Quebec Act), as well as the English-speaking inhabitants, might be elected. Discontent grew deeper, and a bitter feud arose between the rival races.

Pitt, by the Constitutional Act of 1791, divided Quebec into two provinces—Lower Canada for the French-Canadians and Upper Canada for the English-speaking people, giving each province what was supposed to be an exact counterpart of the British Constitution, namely:

1. A Governor, to represent the Crown;
2. An Executive Council appointed by the Crown, similar to the Privy Council;
3. A Legislative Council appointed by the Crown for life, similar to the House of Lords;
4. An elective Assembly, similar to the House of Commons.

To each Parliament was given the power of fixing

the laws for its own province, and thus the vexed question of French law or English law was settled, for in Upper Canada English law was at once established, while no change was made in Lower Canada, the people being well satisfied with the English criminal law as established by the Quebec Act.

One of the provisions of the Constitutional Act was that one-seventh of the public lands in each province was to be set aside for the support of the Protestant clergy. Bishop Strachan, the leading Episcopal clergyman of Upper Canada, used his influence for many years to exclude all other denominations from any share in these lands, known as the Clergy Reserves. This policy aroused much bitter feeling and was one of the causes of the Rebellion of 1837.

The small English-speaking population of Lower Canada were far from satisfied with the division of the provinces. They feared that they would have little influence in the Assembly when separated from their kinsfolk in Upper Canada. For many years, however, they retained control of the Legislative Council, by means of the Governors' appointments—to the great dissatisfaction of the French-Canadian party.

The Act was a step in the direction of self-government, for the people, through the Assembly, had now a voice in the law-making and taxation. Yet the main power remained with the Governor. His consent was necessary to the passing of laws, and their enforcement was wholly in his hands. He was advised and assisted by an Executive Council appoint-

ed by the Crown, and quite independent of the Assembly. The nature of the government, therefore, still depended very largely upon the character of the Governor and of his Council, and during the next fifty years there were many bitter disputes between them and the people.

The War of 1812 stopped the political strife, and all parties joined loyally in the defence of the flag. The various invasions of Canada caused much suffering and loss of property, and to repel them the blood of the settlers was freely shed. Nor should be forgotten the self-denial and hardships of the women and children, who did the unaccustomed work at home that the men might be free to fight for their country. But as is often the case, loss was not without gain. Patriotic spirit was greatly strengthened by the glorious part that the Canadians took in a war that was unprovoked so far as they were concerned. For the first time the colonists of the various provinces thought of themselves as one people, as they stood shoulder to shoulder against a common foe.

After the War of 1812 was over there was a large immigration from the British Isles—owing to the serious condition of the labouring classes in the Old Country. The Home government provided, where necessary, free passage, farm implements, and a year's supplies. From 1826 to 1832 over 30,000 settlers a year are estimated to have emigrated to Upper Canada. Many of the newcomers were imbued with the Radical doctrines then so prevalent among the English middle and lower classes. The

political strife was renewed. The grievances of the people were much the same in all the provinces—that public affairs were managed with a total disregard of their wishes.

The people of Great Britain had already gained the political freedom which they now enjoy. They had control of law-making and taxation, because they elected the members of the Commons, and the leader of the party in the majority in the Commons became Prime Minister and the real head of the Executive Council, whose duty it was to enforce the laws and to expend the public money voted by Parliament. The other members of the Executive Council, or Cabinet, were chosen, with the king's approval, by the Prime Minister, from the members of his party in the Parliament. For their advice to the king, and for expenditure of public money and for all their public acts, the members of the Executive Council were responsible to Parliament. Should they lose the confidence of the majority of the party in power in the Commons, the king had to find other advisers who possessed it. The House of Commons could always compel the Cabinet to resign by refusing to grant it the ordinary supplies of money, and as there had to be an election for the Commons every few years, it is plain that the government could not long be carried on in a manner contrary to the wishes of the people.

But in Canada the members of the Executive Council were appointed by the Governor and held their positions for life. The Governor alone held the power shared in England by the king and the

Prime Minister, and was responsible only to the British government, whose ideas of Canadian affairs often differed from those of the Canadian people. When a new Governor arrived, he was not conversant with Canadian affairs and usually followed the advice of his Executive Council. From among their friends he chose the Legislative Council, judges, magistrates, and other officials. A strong party thus grew up—a social aristocracy and political ring, known as “The Family Compact”.

This Compact controlled the Governor, Executive Council, and Legislative Council, which latter could veto any Bills passed by the Legislative Assembly. The Assembly in return could not stop supplies, for the Government had a fixed civil list—a revenue of its own from the sale of lands, etc., and the Imperial treasury to fall back on. The money raised by vote of the Assembly was spent on roads, bridges, and other public works, so if the supplies were stopped it was the people rather than the officials who suffered. For many years no account of the expenditure of public money could be obtained from the officials by the Assembly. The money of the people was often carelessly, and sometimes corruptly spent. Public lands were granted to the officials and their friends, or were sold to them at prices far below those required of others. The Compact filled the Bench, made judges removable at pleasure, and also allowed them to hold seats in Parliament. They also controlled the best positions in the law and the church, and they gave grants of public lands to themselves of as much as 5,000 acres each and 1,200 acres

to each of their children. They ran the banks, and at last shared among themselves almost all offices of trust and profit.

The only hope of obtaining redress of the people's grievances was through an appeal to the Colonial Office in London. It appears strange that the British government was not willing to extend to Canada the same measure of political power that the British people enjoyed at home. The Family Compact claimed a monopoly of loyalty and made representations to the Home government that if the Governor and his Executive Council were made responsible to the Provincial Parliament, each colony would be practically independent and would soon separate itself from the Mother Land. Those who sought a measure of freedom already enjoyed in Great Britain were denounced as rebels and traitors, looking for annexation with the United States. On the other hand, those who were opposed to the Family Compact asserted that if the people more largely controlled the government the cause of agitation would cease. It is much to be regretted that the British government did not see this in time to prevent an outbreak, not against the British Crown, but against the intolerable state of affairs created by the so-called Family Compact.

The opposition to the Family Compact in Upper Canada was composed of liberal-minded immigrants from the United States, Scottish Presbyterians, who generally stood for a free government, and a large number of men of culture and honour from England. They were known as the Reformers, and chief

among them was Robert Baldwin, a man of renown for integrity and wisdom. He fought for responsible government along constitutional lines with a perseverance that earned for him the reputation of being "a man with one idea". But his efforts in securing a university for the people and his advocacy of a municipal system mark his greatness in other directions. There was also an extreme and radical wing of the Reformers, composed of those who were imbued with the principles of responsible government—quick-tempered, hot-headed men who, smarting under ill-treatment, took more desperate measures for the redress of their grievances, among whom the leader was William Lyon Mackenzie. In the elections of 1824 the Reformers for the first time gained a majority in the Assembly. They carried their many proposals for the improvement of the government, only to have them defeated in the Legislative Council or vetoed by the Governor.

They relaxed their efforts, and the Family Compact gained control of the new House in 1830. Baldwin, Rolph, and other Reform leaders were defeated. Mackenzie retained his seat for York, but was accused of libel and expelled. Three times he was re-elected, only to be rejected by the Assembly. Such persecution tended to make him the popular hero, and the Reformers sent him to England with their petitions for changes. The election of 1834 was won by the Reformers, but the Family Compact was too strongly entrenched in power to be greatly affected. The Home government had recommended that the Assembly be given control of all public revenues,

except those derived from the sale of public lands and retained for the payment of judges, on condition that the salaries of the Lieutenant-Governor and other officials should be guaranteed. They had accepted the recommendation and had granted a permanent civil list, as the amount required for official salaries is called, so that the Council was independent of the Assembly. The Assembly prepared a document called the "Seventh Report on Grievances", in which the defects of the provincial government were very fully stated. The greatest stress was laid on the necessity of making the Executive responsible to the Assembly.

In Lower Canada the moderate Reformers were represented by LaFontaine, and the more radical element by Papineau and Nelson. In 1830 the Reform Assembly under Papineau—the uncrowned king of French-Canadian democracy—declined to accept the recommendation of the Home government to grant a permanent civil list, and refused to vote supplies. In 1834 their grievances were expressed in the famous "Ninety-two Resolutions" of the Assembly, which were carried to England by special agent. The reply to the "Seventh Report on Grievances" from Upper Canada, and to the "Ninety-two Resolutions" from Lower Canada was that no concessions could be made to the principle of responsible government, though reforms were promised on less important points.

Sir Francis Bond Head came out as Governor to Upper Canada in 1836. He gave seats in the Executive Council to three leading Reformers, but it soon

became evident that he had no intention of accepting their advice or of taking them into his confidence. They resigned, and the Governor filled their places with members of the Family Compact. The Assembly then refused to vote the ordinary supplies. Head dissolved it, and in the ensuing election took a most active part against the Reformers. He declared that the whole party was disloyal, and that a vote for a Reformer was a vote against Britain. The whole power of the government was unfairly and corruptly exerted, with a result that the Reformers were defeated. In Lower Canada, the Assembly had refused to vote supplies, until, in March, 1837, the unpaid salaries of the officials amounted to over \$700,000, and finally, under the influence of Papineau, actually refused to transact any business until their demands were granted. In that month the Home government passed an Act authorizing the Governor of Lower Canada to draw the amount from the Provincial treasury without a vote of the Assembly. The news of this Act caused great excitement throughout the province; Papineau, Nelson, and others denounced the British government and advised the people to resist its authority. Mackenzie and the extreme party in Upper Canada, embittered by injustice and defeat, joined hands with Papineau and began to plot a revolution.

How far the Rebellion of 1837 can be excused or justified is a question upon which every thoughtful person must form his own conclusions from a personal and consideration of the history of the time. The question is a practical one, for no person admits

that rebellion against a regularly organized government is never justifiable. Every true lover of liberty will admit that a rebellion is necessary in certain circumstances. When a nation has not security for life and property, when the rights of a person are violated arbitrarily and unjustly by the powers that be, when men suffer sharp wrongs and their liberties are trampled on daily by the iron heel of oppression, when taxation is imposed without legislative representation, then rebellion is a virtue and not a crime. It is far preferable to die the death of a brave man than to live the life of a slave. Thus the Swiss rebellion against Austrian tyranny was justifiable, as was also that of the states of Holland. But there was a great difference between the condition of these countries prior to their rebellions and that of Canada. The latter had trial by jury, the law of Habeas Corpus protected personal rights, the levying of internal taxation was vested in the Assembly, and the political evils which existed must soon have disappeared before the pressure of constitutional agitation, the progress of national independence, and the increase of national population and wealth. It must be admitted that the imprudent conduct of Sir Francis Bond Head produced, in a great measure, the rebellious outbreak in Upper Canada. His injudicious administration created a large amount of political agitation. The absence of all military preparation to meet armed riots of any kind invited the rebellion of a small minority of unstable, disaffected persons such as always exist, even in the best-governed countries. Lord Durham

says: "It certainly appeared too much as if the rebellion had been purposely invited by the government, and the unfortunate men who took part in it drawn into a trap by those who subsequently inflicted so severe a punishment on them for their error."

Like all rebellions, that of Canada, though easily quelled, produced its harvest of disorder. It caused heavy expense to the country, checked its progress, aroused men's evil passions, and set neighbour against neighbour. If a revolution is a rebellion that succeeds, the Rebellion of 1837 was a revolution—as much so as the Revolution of 1688 in England. It opened the eyes of the Home government to the depth and extent of the discontent, and they sent out Lord Durham to report upon the political conditions. He was a strong supporter of the Liberals in the Old Country, and had taken a leading part in carrying the first Reform Bill. He was also clear-sighted, earnestly devoted to duty, and he was the first British statesman to arrive at a clear understanding of the real condition of the people. A more finished, instructive, and thoroughly fair report has never been made to the British government. It was a noble and far-sighted plea for autonomy and equality. He made independent researches for the facts and conditions upon which his report was formulated, and these agreed, with few exceptions, to the "Seventh Report on Grievances" prepared and presented to the Imperial Parliament by Mackenzie. Lord Durham recommended:

(1) The union of the Canadas so as to protect the English-speaking minority in the Lower Province,

and by giving the trade of Upper Canada free access to the sea, to end the disputes over the division of the import duties at Montreal;

(2) The granting of responsible government.

The author of this famous report did not long survive its appearance. His death was hastened by his faithful work in Canada and by the harsh criticism of his actions there. But his dying hope: "The Canadians will one day do justice to my memory", has been fully realized, and his Report is now regarded as the charter of our political liberties.

The English-speaking minority in Lower Canada favoured the union. The French-Canadians opposed it. In Upper Canada the Family Compact opposed it at first, but had to withdraw their opposition or lose their much-vaunted reputation for loyalty and devotion. The British Parliament passed the Act of Union in 1840, and it came into force in 1841. It provided that the government of the united provinces should consist of:

- (1) A Governor-General appointed by the Crown, and assisted by an Executive Council, the members of which were to be chosen from the Legislature;
- (2) A Legislative Council of at least twenty members, appointed by the Crown for life;
- (3) An Assembly of eighty-four members elected in equal numbers from each province for a term of four years.

Much larger powers were conferred on the new Legislature, either by the Act of 1840 or by democratic amendments made to it between 1840 and

1854. Under this new and beneficent régime the united provinces, led by Baldwin and LaFontaine, secured responsible government, and after the struggle of 1841-1849—a struggle for which Metcalfe, a Governor of the old school, was mainly responsible—no Executive Council, or Cabinet, could remain in office unless it had the support of the majority in the popularly elected Chamber of the Legislature.

Between 1847 and 1866 the united provinces several times exercised the right conferred on them by Parliament of amending the constitution of 1840. In 1854 the provinces were conceded the right to enter into reciprocity with the United States. In 1859 the Legislature of the united provinces successfully asserted the right to enact tariff legislation, without regard to the manufacturing and exporting interests of Great Britain. Between 1840 and 1867 experience demonstrated that the greater the freedom conceded to the colonies the more anxious they were to maintain and strengthen the links that bound them to the Mother Country.

After the union of the provinces of Upper and Lower Canada the members of the Assembly were loosely grouped in two parties:

(1) Conservatives—composed of those who were opposed to republican license and democracy, and who looked with horror on the rebellion and on every person or thing connected with it. They were divided into two classes:

(a) Representatives of the old lingering Tory prejudice;

- (b) Representatives of the doubtfully accepted responsible government.
- (2) Reformers—composed of those who were for liberal and progressive measures. They were divided into three classes:
 - (a) Representatives of mild constitutional reform;
 - (b) Representatives of reform expectations—sweeping ultra-measures;
 - (c) The French-Canadian representatives, who were opposed to the union and who were not represented in the Cabinet, though they held the balance of power in the Assembly.

In 1842, Governor Bagot introduced the first Reform leaders, Baldwin and LaFontaine, into the government. This action roused a storm of protest, and Bagot was fiercely assailed for his so-called surrender to rebels. This view was also taken in England by Peel and Lord John Russell, who were strongly opposed to the granting of autonomy to Canada, not being able to see that the Crown should govern through those in whom the people's Assembly had confidence. Bagot died soon after, and Governor Metcalfe was sent out to administer affairs on altogether different lines. He broke with his advisers in 1843 and governed for some months without a Ministry and without a Parliament. *The Globe* appeared at this time and strongly supported the rights of the people in the election of 1844, which Metcalfe said "was between loyalty on the one side and disaffection to Her Majesty's government on the other". Metcalfe's loyal government won, but

it was a barren and precarious victory, identifying, as it did, the line of political cleavage with that of racial division. Metcalfe died in 1846. Lord Elgin came out as Governor in 1847, and with his administration the new era of self-government began under Baldwin and LaFontaine, who won the elections early in 1848.

The Conservative Ministry of 1845 had recommended the payment of losses caused by the destruction of property during the rebellion. In Upper Canada the French-Canadian party voted for this on condition that steps should be taken to pay just losses in Lower Canada. The Ministry agreed. Commissioners were appointed and made their report, and the Conservative leader, feeling the necessity of French-Canadian support, introduced a Bill for payment. But the Bill was not put through, and at the elections in 1848 the Reformers were successful, and Baldwin, LaFontaine, Hincks, Price, Blake, Malcolm Cameron, Papineau, and Nelson were returned as members. In 1849 LaFontaine introduced a Bill to carry out what the Conservative Ministry had promised. This caused great excitement throughout the country from Montreal west. The Conservative watchword, in which some Reformers joined, was "no pay to rebels", and the old race war was on, hotter than ever. To escape from French domination, as it was termed, the more violent Tory members of the Conservative party declared that they were prepared to go any length, even to annexation with the United States, a measure which, in the passionate excitement of the time, was openly advo-

cat d. Thus, parties who had long made boast of their loyalty to the British Crown and of their hatred of republican democracy were now supporting the same treasonable measures which many of their opponents had been accused of in 1837, and of whom a number had perished on the scaffold in 1838. It forms a mortifying epoch in the history of Canadian parties, and is evidence that a political party should be careful not to attempt to monopolize the British flag nor to accuse its opponents of disloyal motives. The Ministry, sustained by a majority of both Houses, put the Bill through. It was signed by the Governor, and his conduct was approved by the Home government. The passage of the Bill was the condition of the support of the French-Canadian members. Had it been abandoned it would have shown moral cowardice on the part of the Ministry, and, moreover, would have led to their defeat.

Th was rioting in Upper Canada. Baldwin, Blak Mackenzie were burned in effigy; the houses of Rolph and George Brown were damaged. In Montreal the mob attacked the Assembly in session, drove out the members, demolished the furniture, and ended by setting fire to the Parliament Buildings and destroying property equal in value to the amount of the Rebellion Losses Bill. The next night the mob wrecked LaFontaine's house and burned his stables, smashed windows of Baldwin's and Campbell's boarding-houses, and also wrecked Hincks' printing office and damaged his house, as well as that of Nelson. LaFontaine's house was again attacked, and in the *melée* one man was killed.

The Governor-General, on several appearances, was greeted with showers of stones and other missiles. It was party feeling now venting its wrath in riotous fashion, because of the imaginary triumph of the rebellious foe that had been crushed in 1837.

The passing of the Rebellion Losses Bill marks the final triumph of political freedom in Canada. From this time may also be dated her commercial freedom. In 1846 Britain declared for open markets, and Canada lost her advantage in the British markets for certain of her products, and trade suffered in consequence. In 1849 the repeal of the Navigation Laws by Britain removed the last barrier to Canadian commerce with foreign nations, and the Reciprocity Treaty of 1854 increased the volume of trade between Canada and the United States six-fold in ten years.

Two vexed questions were still pressing for solution—the clergy reserves and the seigniorial tenure. The one contained the problem of church and state, the other the landed aristocracy against the unlanded democracy. On these the party of the Reformers could find no common ground for agreement.

Moreover, union in opposition is much easier than union in office, and it was natural, therefore, that, with the accession of the Reform party to power and the definite acceptance of the great principle which had held them together, differences of opinion which had been held in abeyance during the struggle should now appear. The Reformers were a party of progress, and it was natural that some of them should

aim at a more rapid rate of advance than others. In addition to this, the recent events in Europe—Chartism, the repeal of the Corn Laws movement in the British Isles, and the democratic revolutions on the continent—gave a strong impulse to the doctrines of radicalism and, at the same time, drove many people from the party of progress and directed them towards the party of conservatism and stability. Neither Baldwin nor LaFontaine had anything of the complexion of a radical, and, as against the moderation and temperate zeal of the chiefs, the haste and the unqualified doctrines of some of their followers now began to stand in rude contrast. William Lyon Mackenzie, Dr. John Rolph, McDougall, and Malcolm Cameron rose into influence under the name of Clear Grits. Their platform consisted of the following demands:

1. The application of the elective principle to all the officials and institutions of the country, from the head of the government downwards;
2. Universal suffrage;
3. Vote by ballot;
4. Biennial parliaments;
5. Abolition of property qualifications for Members of Parliament;
6. A fixed term for the holding of general elections and for the meeting of the Legislature;
7. Retrenchment;
8. Abolition of pensions to judges;
9. Abolition of the Courts of Common Pleas and Chancery, and enlargement of the jurisdiction of the Court of Queen's Bench;

10. Reduction of lawyers' fees;
11. Free trade;
12. Direct taxation;
13. Amendment of the Jury Law;
14. Modification of the Usury Laws;
15. Abolition of Primogeniture;
16. Secularization of the Clergy Reserves and the abolition of the rectories.

The term "Grit" was afterwards applied to the Reformers generally, and especially to the followers of George Brown. But in the beginning Brown had little sympathy with the new party and supported LaFontaine and Baldwin to the last.

At the same time in Lower Canada a radical party was formed, following the lead of Papineau, in opposition to LaFontaine. A group of Papineau's followers among the younger men, called the *Parti Rouge*, advocated a programme including universal suffrage, the repeal of the union with Upper Canada, the abolition of the church tithes, the election of the Upper House, while some of them openly advocated republicanism and annexation with the United States. In 1850 Papineau made common cause with MacNab and his party in voting against the government. To add to the difficulties, Brown of *The Globe*, commenced an outcry against Roman Catholicism and all its works. LaFontaine did not believe in the policy of secularization, while Hincks and Baldwin voted for it.

This difference of opinion did not strengthen the hold of the Ministers on their majority. In Lower Canada the Reformers wanted the Seigniorial Ten-

ure done away with, but some wanted the seigniories expropriated without compensation; others wished to see them expropriated with compensation; others favoured a voluntary arrangement, aided by legislation; and others, like Papineau (himself a seignior), wished to leave the question where it was. Matters dragged along till the end came in 1851. The Reform party had become too ponderous to be held together and broke of its own weight. The united strength of the Reformers, Radicals, Clear Grits, Independents, and *Parti Rouge* so outnumbered the Conservatives that, instead of uniting to outvote so small a minority, the leaders of the separate groups each set out to court new alliances so as to convert his subordinate position into a dominant one in a new combination. Baldwin and LaFontaine resigned, and Hincks and Rolph became Reform leaders. Hincks was accused of partiality to the Roman Catholics, and of endeavouring to make personal gain out of debentures and lands, and a lot of Reformers went over to Brown. An election followed, in which the leading Reform papers were against the Ministry. Brown and Mackenzie aided the Conservative opposition, led by Sir Allan MacNab and John A. Macdonald. Brown defeated Malcolm Cameron in the election, and when the House was called together the extreme Reformers united with the Conservative Opposition and defeated George E. Cartier for the Speakership. Hincks resigned, and MacNab formed a coalition government, including John A. Macdonald, who was the real leader. Many supporters of the old administration went

into Opposition along with the extreme Reformers.

The Conservative party was now consolidated under MacNab and Morin, and was reinforced by a number of the Reform party, led by Hincks. The Opposition consisted of the remnant of the old moderate Reformers, led by John Sandfield Macdonald, the Rouges, or Liberal party of Lower Canada, under Dorion, and the extreme Reformers and Clear Grits under George Brown. This Ministry settled the Clergy Reserves and Seigniorial Tenure questions in 1854. The Legislative Council was made elective in 1856, though the system was relinquished later under Confederation. MacNab was succeeded by Taché for a short time; then John A. Macdonald became Premier and appealed to the country in 1858. The Reformers won in Upper Canada, but the Rouges were in the minority in Lower Canada. In order to carry on his government, Macdonald had to abandon the principle of "double majority", that is, a majority in both provinces, which had been followed since the union in 1840. By doing this he managed to rule by his Lower Canada majority, and gave the Reformers in Upper Canada cause for their outcry against French domination, and led George Brown and his friends to make a strong demand for "Rep. by Pop".

When the census of 1851 showed that the population of Upper Canada had surpassed that of Lower Canada the Reformers demanded an increased number of members. The French-Canadians opposed this, as it would place them in the minority in the union, and they pleaded, in support of their con-

tention, that the representation of Lower Canada had not been greater than that of Upper Canada during the years when its population had been much greater. The effect of this agitation was to give the Reformers a great majority in Upper Canada, but to make the Lower Canadians almost unanimous in support of the Conservatives. The choice of a capital was made so difficult by sectional jealousy that the government asked the Queen to decide, and in 1858 she named Ottawa. The members of rival cities were disappointed and united to carry a resolution in the Assembly disapproving of the choice. John A. Macdonald, with characteristic shrewdness, saw the advantage to be derived from this vote, and at once determined to resign. Thus he completely identified himself and his party with the Sovereign, and that Sovereign, too, a woman; and in becoming her defenders they were covered by the shadow of the public sympathy that encircled her.

Vexed with themselves that selfish motives had led them into a false position, the Conservatives who had voted for the measure took the first opportunity to redeem their reputation. Mr. Brown had been called upon to form a Government. He accepted, and among the members of his Ministry were John Sandfield Macdonald, Oliver Mowat, A. A. Dorion, and L. H. Holton. The House of Assembly, by a large vote, declared they had no confidence in Mr. Brown's new Cabinet. This adverse vote led Brown to demand a dissolution, but his Excellency, whose political leanings were quite evidently in another direction, declined to grant it. The Brown Cabinet had

no course left but to resign, which it did, after remaining in power for two days. The Governor then called upon Mr. Cartier, leader of the Lower Canada majority, to form a Cabinet, which, with the aid of John A. Macdonald, was speedily done. This Cabinet included John A. Macdonald, Cartier, Alexander T. Galt, and others. Taking advantage of a provision in the statutes of 1857 that where a member of a Cabinet resigned his office, and within one month afterwards accepted another office in the government, he should not thereby vacate his seat, the Ministers, by a simple changing of positions, complied with the law and did not go back for re-election. The courts upheld the Cabinet, but the provision in the Act, which should never have been enacted, was soon afterwards repealed. This "double shuffle", as it was termed, did much to intensify the feeling between the parties. The census of 1861 showed a difference of 300,000 in population in favour of Upper Canada, and the cry for representation by population—"Rep by Pop"—grew louder than ever. Parties became so evenly balanced that a change of a few votes in the Assembly meant a change of government. Thus, in three years four Ministries had been defeated, and two general elections had failed to ease the strain.

Under such conditions Ministers spent their energies in efforts to strengthen their political positions. Corruption flourished, and public business was at a standstill. Repeated changes of Cabinets had been tried, dissolutions of Parliament had been resorted to, every constitutional specific had been tested, but

all alike had failed to unravel the Gordian knot which party spirit had tied so firmly around the destinies of the country. The public stood aghast at this state of affairs, while lovers of British constitutional government regarded the situation with dismay. The Act of Union had already fulfilled its mission, and from the progress of the country had arisen a condition of affairs which imperatively pointed to a fresh constitutional revolution as the only solution of the difficulties that surrounded it. To the political embarrassments were added financial difficulties largely connected with the Grand Trunk Railway. Faced with complications so various, the leading minds of the country, weary of factional strife, applied themselves to discover some mode of escape from the dangerous difficulties of the public situation. Canadian statesmen now showed that in their country's need they could waive their political and personal differences and seek in a higher and wider sphere of action the solution of the national problems, which under existing conditions had proved hopeless. The result was a triumph for the "joint authority" scheme of George Brown, which had been voted down, opposed, and ridiculed by friend and foe alike.

Negotiations were opened between the rival leaders, and an understanding was soon reached, based upon a project of federal union of the two Canadas, with provisions for the admission of the other provinces and of the Hudson Bay Territories. A coalition government, in which George Brown, William McDougall, and Oliver Mowat were given seats,

was formed to carry out this policy of Confederation and to open negotiations with the other provinces for a larger union.

Meanwhile the struggle for reform in the Maritime Provinces was waged without that bitterness of race and creed that marked the contest in the Canadas. Joseph Howe became the leader of the Reformers of Nova Scotia in 1836, and after a prolonged fight against the interests of the select few who held the ruling power, secured responsible government in 1848. L. A. Wilket, the popular champion of the Reformers in New Brunswick, won the victory for his province in the same year, while Prince Edward Island gained the much coveted boon in 1851. Nor had the inhabitants of those provinces such serious difficulties in the conduct of their public affairs as had been met in the united provinces, where conflicting French and English nationalities had produced many vexed questions for solution. Efforts had been made in Prince Edward Island to remedy the evils of the defective system of land tenure, while in New Brunswick and Nova Scotia the chief concerns of the public men of the time had been the securing of adequate railway accommodation, the extension of trade and commerce, and the development of systems of public and high school education.

The union of the different British colonies was not a new idea. It was advocated as early as 1790; the War of 1812 brought a startling realization of the isolated and dangerous position of the divided provinces; Lord Durham's Report referred to the advan-

tages which would accrue from a union of the colonies into a single state; the British-American League, founded in 1849, adopted Confederation as one of its main objects; the Legislature of Nova Scotia passed a resolution favouring union of the British provinces in 1854; and the Canadian government sent Cartier, Galt, and Rose to England in 1858 to urge the matter on the Imperial authorities. In 1861, on motion of Joseph Howe, a resolution was carried in the Nova Scotia Legislature requesting the Colonial Secretary to open communication with the different provincial governments upon the subject of union. The reply to the request was in effect that it was a matter for the colonies to take up among themselves. In process of time, to the slow-growing national instinct, which was the fundamental cause of Confederation, were added many practical influences which hastened its accomplishment. In the Maritime Provinces the obvious disadvantages of the existing disunited system, hostile provincial tariffs, independent telegraph and postal systems, different currencies, and divergent civil and criminal laws were arguments for union and harmony locally, while the experience of endeavouring to build a railway from Halifax to Quebec had shown the impracticability attending railway construction through provinces with different and changing policies.

To the local conditions already noted must be added the danger to all the British colonies of war between Great Britain and the United States, the deadlock in the Canadian Parliament, the unrest

caused by the Fenian raids, the abrogation of the Reciprocity Treaty, and the threatened withdrawal by the United States of bonding privileges. Moreover, the possibilities of the great North-West had been growing on the minds of Canadian statesmen, who saw a future nation in the vast British territorial possessions. Joseph Howe, speaking at Halifax as early as 1851, said: "I believe that many in this room will live to hear the whistle of the steam engine in the passes of the Rocky Mountains, and to make the journey from Halifax to the Pacific in five or six days."

Direct action was taken in 1864, when Dr. Tupper introduced a series of resolutions in the Nova Scotia Legislature providing for a union of the Maritime Provinces. Delegates were appointed by the governments of Nova Scotia, New Brunswick, and Prince Edward Island to meet for the discussion of a legislative union among themselves at Charlottetown in September, 1864.

The Canadian coalition government sent delegates to this conference, and after hearing these representatives the larger scheme of union appears to have met with strong approval, and the conference adjourned with the understanding that delegates from all the provinces should convene at Quebec in October. On October 10th, 1864, thirty-three delegates from all the provinces, including Newfoundland, assembled at Quebec, and after eighteen days of deliberation with closed doors, "The Quebec Scheme" of union was finally agreed upon. It was to be kept secret until it should be

submitted to the various provincial Legislatures for their approval. But knowledge of the principal terms leaked out, and the people were soon eagerly discussing it. In 1865 the Canadian Parliament approved of the scheme by a vote of ninety-one to thirty-three on a motion asking for an Imperial measure of confederation. But strong opposition developed in the eastern provinces—Prince Edward Island rejected the scheme; Newfoundland refused even to discuss it; an election in New Brunswick returned a hostile majority, and Tilley had to carry on a vigorous educational campaign in order to reverse the result in another election in 1866. In Nova Scotia Howe contended that an election should be held before the province was finally committed, but the union was approved by an Assembly that, as the next election showed, did not truly represent the opinion of the province on the question. Nova Scotia was thus practically forced into Confederation. Howe made strenuous efforts to free his province from the union. In this he was successfully opposed by Tupper, and though the province afterwards received “better terms”, and Howe joined the Dominion government, the original compulsion long left a feeling of bitterness behind it.

It is worthy of note that about this time a Bill was introduced into the United States Congress and was passed through two readings, providing for the admission of British North America into the American Union as four separate states, with the assumption of its public debt by the general government. It failed in its object for the simple rea-

son that the Canadians had no desire for annexation. They looked upon the Bill as an unwarranted interference with the affairs of an independent country.

Meanwhile, all the preliminaries having been arranged, delegates from the provinces of Canada, Nova Scotia, and New Brunswick (Prince Edward Island and Newfoundland having decided not to come in) met in London on December 4th, 1866, to arrange the final terms of the Act to be submitted to the Imperial Parliament. On February 28th, the British North America Act, 1867, received the royal assent, and July 1st, 1867, was fixed as the day on which the Dominion of Canada should commence its existence.

The British North America Act—the written constitution of Canada—was so comprehensive in its scope that in the fifty years since it was passed the Dominion has asked for or assumed only four or five powers that it could not exercise under the original Act.

Sections Ninety-one and Ninety-two of the Act deal with the division of legislative power between the Dominion on the one hand and the provinces on the other. The Dominion is vested with the sovereign power of the state, that is, to “make laws for the peace, order, and good government of Canada” in relation to all matters not assigned to the provinces; and for greater certainty a list of subjects is enumerated in Section Ninety-one over which the Dominion government has control, while Section Ninety-two specifies the subjects delegated to the

provinces. Section Ninety-five provides for concurrent powers of legislation in relation to two subjects only—agriculture and immigration, but it has been found in practice that subjects which in one aspect and for one purpose fall within provincial jurisdiction, may in another aspect and for another purpose fall within Dominion jurisdiction, so that the existence of concurrent authorities on such subjects must be admitted, and the jurisdiction settled by the proper judicial tribunal. The enactments of the Parliament of Canada, in so far as they are within its competency, override provincial legislation, but within the accepted limits and area described by Section Ninety-two the provincial legislature is supreme, and represents the “omnipotence of Parliament” as fully as the Parliament of Canada and the Imperial Parliament do in their respective spheres.

The Act provides that Canada shall be a bi-lingual country in federal affairs, but in the provinces, other than in Quebec, the language to be used officially shall be within the control of the provinces, and that the provinces “may exclusively make laws in relation to education”, provided any such law does not “prejudicially affect any right or privilege with respect to denominational schools which any class of persons have *by law* in the province at the time of the union”. If legislation is enacted by the provinces in respect to such schools there lies an appeal to the Governor-General in Council, and the Parliament of Canada may enact such remedial legislation as the circumstances of each case may require.

When in 1905 the new provinces of Saskatchewan and Alberta were organized, the Dominion government proposed to give denominational schools in those provinces a position similar to that which they possess in Ontario and Quebec. The proposal was strenuously opposed, and finally a compromise was arrived at by which the provisions in force under the Ordinances in the North-West Territories at the time (Caps. 29 and 30 of the Ordinances of the North-West Territories, 1901) should be continued. These provisions are to the effect that the minority of the ratepayers in any district, whether Protestant or Roman Catholic, may establish a separate school therein; and in such case the ratepayers establishing such Protestant or Roman Catholic separate schools shall be liable only to assessments of such rates as they impose upon themselves in respect thereof. The board, after the establishment of a separate school district, shall possess and exercise all rights, powers, privileges, and be subject to the same liabilities and method of government as is provided in respect of public school districts. Any school board may direct that the school be opened by the recitation of the Lord's Prayer, and that such religious instruction as shall be permitted or desired by the board may be given during the last half-hour before closing, from which instruction any child may be excused upon the request of the parent or guardian.

The B. N. A. Act further provides that the four provinces shall be federally united, with provisions for additions, "with a constitution similar in principle to that of the United Kingdom".

This recital establishes a basis for the working out and settlement of many matters upon which the Act itself is silent, and gives a valid foundation for the claim that the Act is the written constitution of Canada, as it clearly provides for the conduct of affairs in accordance with the principles of the British constitution.

For example, Section Fifty-five apparently gives the Governor-General discretion to assent to a Bill, to withhold assent, or to reserve it, but under the British constitution, while the discretion of the sovereign is absolute in theory, yet in practice the sovereign must act in accordance with the advice of the Privy Council. Following this principle, the Governor-General's discretion must be exercised in accordance with the advice of his Privy Council. While the Act secured this principle, it was not fully established in Canada until 1877.

In 1870 the Dominion obtained power to enact navigation laws, and in 1894 to make her own immigration laws, even when they excluded undesirables from the United Kingdom. At the time of Confederation the Dominion was obliged to recognize and conform to all commercial treaties made by Great Britain. Since 1898 the Dominion has been bound by no commercial treaty to which it has not given its assent and to which it is not a party, and since 1909 it has had the power of naming its own plenipotentiaries for the negotiation of commercial treaties—of acting in these matters like an independent state.

By the Constitution of 1867 certain classes of Bills passed by the Dominion Parliament were reserved for the royal assent to be given, not at Ottawa, but in London. To-day in practice no Bills are reserved, and the Dominion Parliament, in its legislative work, is no more apprehensive of the veto of the Crown than is the Parliament at Westminster.

Section Nine of the Act declares in effect that "the executive government and authority of and over Canada is vested in the sovereign". When the king appoints a Governor-General to act for him he can in theory give him instructions imposing such limitations and conditions as may be deemed expedient under the advice of the Privy Council. Thus the constitutional position of the Governor-General towards his ministers may be made very different from that of the king with respect to his ministers. For instance, the Commission issued in 1872 to Lord Dufferin gave him the absolute power to extend or to withhold a pardon or reprieve of an offender condemned to death, while the instructions accompanying the Commission laid down other limitations and conditions on different matters. In 1875 Lord Dufferin, under authority of his Commission, and acting on his own judgment, reprieved one Lepine, sentenced to death for the part he took in the North-West Rebellion. This case brought up the whole question of the responsibility of the ministers for the Governor's acts, and incidentally the constitutionality of instructions given the Governor-General by his Commission or otherwise, where ministerial responsibility was excluded. Blake went to

England and argued the question of the right of Canada to "a constitution similar in principle to that of the United Kingdom" with such success that the Commission and instructions to the Governor-General were redrafted, and since then the principle of "ministerial responsibility" has not been disputed, whether with regard to assenting to Bills, granting of pardons, or anything else. This same principle applies to the relations between the Lieutenant-Governors and their ministers, and the establishment of the principle of "ministerial responsibility" may be looked upon as the crowning triumph of responsible government and of democracy in Canada.

In the original Act the government at Ottawa had no veto on nominations to the high office of Governor-General, but to-day Ottawa has in practice a veto on undesirable nominations. While still closely connected with Great Britain by many strong ties, there is scarcely an attribute of independent nationality that the Dominion of Canada does not now possess.

At the first meeting of the Canadian Parliament after Confederation attention was turned towards the extension of the Dominion westward, and resolutions were introduced in favour of the immediate transfer to Canada of Rupert's Land and the North-West Territories.

Early in 1869 a bargain was concluded with the Imperial authorities by which the Hudson's Bay Company gave up its trade monopoly and all its claims to government in consideration of \$1,500,000

in cash—an area of 50,000 acres around the various trading-posts retained by the company—and one-twentieth of the entire region in the fertile belt from Lake Winnipeg and Lake of the Woods to the Rocky Mountains, and from the International Boundary to the North Saskatchewan River. This surrender left a vast territory open to settlement and to unhindered development and exploitation, and railway and other capitalists and their political friends hastened to reach out and grasp immense grants of land, coal mines, timber areas, and other resources.

In 1870 the District of Assinaboia became the Province of Manitoba. It is a matter for public regret, if not for condemnation, in which the government, the Hudson's Bay Company's officials, and the crafty agitator, Riel, must share, that, through lack of information and from the injudicious conduct of negotiations for the formation of the province, many of the settlers got the impression that they were going to lose their homesteads and to be otherwise deprived of their rights. The result was a deplorable outbreak of violence—the Riel Rebellion—which was easily quelled, but which left an uneasiness among the half-breeds of the West that Riel took advantage of to incite a second rebellion in Saskatchewan in 1885.

British Columbia was admitted to the Dominion in 1871, one of the terms of union being that the Dominion of Canada should commence within two years the construction of a railway to connect British Columbia with the older provinces, and should complete the work within ten years. The last spike to

connect the two sections of the Canadian Pacific Railway—built from the east and the west—was driven in 1885.

From 1870 to 1876 the North-West Territories were governed by Lieutenant-Governors, who were at the same time Lieutenant-Governors of the province of Manitoba. They exercised autocratic powers, limited at first by directions from the Secretary of State, and after 1873 from the Minister of the Interior. From 1877 to 1887 the government was conducted by a resident Lieutenant-Governor and a Council, nominative at first, afterwards partly elective. As the population grew, the increased number of elected members rendered possible the transition to a Legislative Assembly, in which the Lieutenant-Governor gave place to a Speaker, chosen by the members from among themselves. Differences between the Assembly and the Lieutenant-Governor developed into the old-time struggle to make the advisory council responsible to the Assembly. The Territories attained the complete form of responsible government in 1897, when provision was made for an Executive Council chosen from the members, each of whom, on acceptance of office, was forced to seek endorsement from his constituents by going back for re-election. During the whole period of the existence of the Territorial Government there were certain matters upon which the Assembly did not possess the competence to legislate. It was not permitted to charter railway or telegraph lines, to administer justice in criminal matters, to borrow money upon the sole credit of the Territories, to amend its own constitution, or to

establish hospitals, asylums, or other institutions, as the provinces did. The control of all the assets of the country—lands, minerals, and timber—were in the hands of the Dominion government, and the Assembly, not having any fixed subsidy, was compelled to depend practically altogether for its revenue on annual doles from the Dominion government. This state of affairs continued until 1905, when the two provinces of Saskatchewan and Alberta were organized and given the full privileges of self-government. The Dominion government, however, held, and still holds, control of the valuable natural resources of the two provinces. The organization of the prairie provinces completed the chain of Confederation from ocean to ocean, and realized the forecast of the far-seeing statesmen of fifty years ago—"an immense empire built up on our part of the North American continent, where the folds of the British flag will float in triumph over a people possessing freedom, happiness, and prosperity".

The vast, sparsely-settled hinterland of the three prairie provinces, rich in fur-bearing animals, fish, and minerals, is still under the control of the Dominion government, while, to the north of British Columbia, the Yukon Territory has a provisional government almost similar to that of the old North-West Territories.

Canada may well be proud of her attainment of democratic, sovereign independence, but the citizens must remember that eternal vigilance is the price of safety, and that the tendency on the part of the governments in power to usurp the authority that a

free people alone should exercise, if allowed to go unchecked, may lead to autocratic domination. The fact that legislation is promulgated under the guise of war or emergency measures, thus appealing to the sentiment of the people, renders caution all the more necessary. Out of Rousseau's gospel of Liberty grew Napoleon's gospel of Despotism, and out of the situation created by those who preached the rights of man emerged a despot, who trampled alike on the rights of man and nations.

Events of recent occurrence in the Dominion show that much remains to be done before true national unity is achieved. Our population is composed of diverse racial elements, and therein lies a problem that the talents of the leading statesmen of the present day have only rendered more difficult of solution. If the great questions of racial amity are to be satisfactorily solved in Canada, there can be no place for petty animosities, racial and religious prejudices, nor yet for bitter controversy. Unless our people, of whatever nationality, are actuated in thought and conduct by a spirit of tolerance and good-will towards all classes and creeds, the Dominion of Canada can never rise to the level of her potential greatness.





